

set of minutes disclosing the identity of each speaker, which are publicly available pursuant to § 147.8(a), shall be furnished to any person at the actual cost of duplication or transcription pursuant to the schedule of fees set forth in 17 CFR part 145, appendix B (a)(4), (a)(5), (a)(7), (a)(8), (a)(9), (d) and (e).

(b) Requests for copies of transcripts, transcriptions of electronic recordings or sets of minutes as described in paragraph (a) of this section shall be made either in person, by telephone, or by mail addressed to the FOI, Privacy and Sunshine Acts compliance staff, Office of the Secretariat, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581.

(7 U.S.C. 4a(j) and 16a as amended by Pub. L. 97-444, 96 Stat. 2294 (1983) and 5 U.S.C. 552, 552a, and 552b)

[42 FR 13704, Mar. 11, 1977, as amended at 45 FR 26955, Apr. 22, 1980; 48 FR 46012, Oct. 11, 1983; 49 FR 12684, Mar. 30, 1984; 60 FR 49336, Sept. 25, 1995]

#### **§ 147.10 Interpretation of this part with other provisions.**

(a) Nothing in this part shall be interpreted as:

(1) Expanding or limiting the present rights of any person under part 145 of this title (implementing the provisions of the Freedom of Information Act, 5 U.S.C. 552), except that the exemptions set forth in § 147.3(b) of this part shall govern in the case of any request made pursuant to part 145 to copy or inspect the transcripts, recordings or sets of minutes described in this part; or

(2) Authorizing the Commission to withhold from any person any record, including transcripts, recordings or sets of minutes required by this part, which is otherwise accessible to such individual under part 146 of this title (implementing the provisions of the Privacy Act, 5 U.S.C. 552a).

(b) The requirements of chapter 33 of title 44, U.S. Code (with respect to the disposal of records), shall not apply to the transcripts, recordings and minutes described in this part.

## **PART 148—IMPLEMENTATION OF THE EQUAL ACCESS TO JUSTICE ACT IN COVERED ADJUDICATORY PROCEEDINGS BEFORE THE COMMISSION**

### **Subpart A—General Provisions**

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- 148.27 Decision.
- 148.28 Appeal to the Commission.
- 148.29 Judicial review.
- 148.30 Payment of award.

**AUTHORITY:** Equal Access to Justice Act, 5 U.S.C. 504(c)(1) and secs. 2(a)(11) and 8a(5) of the Commodity Exchange Act, 7 U.S.C. 4a(j) and 12a(5), unless otherwise noted.

**SOURCE:** 46 FR 57671, Nov. 25, 1981, unless otherwise noted.

### **Subpart A—General Provisions**

#### **§ 148.1 Purpose of these rules.**

The Equal Access to Justice Act, 5 U.S.C. 504 (called “the Act” in this part), provides for the award of attorney fees and other expenses to eligible individuals and entities who are prevailing private parties in adjudicatory proceedings before the Commission. An eligible party may receive an award when it prevails over the Commission, unless the Commission’s position was substantially justified or special circumstances make an award unjust. The

rules in this part describe the parties eligible for awards and the proceedings that are covered. They also explain how to apply for awards, and the procedures and standards that the Commission will use to make them.

[51 FR 18880, May 23, 1986]

**§ 148.2 When the Act applies.**

The Act applies to any covered adjudicatory proceeding pending before the Commission on or after October 1, 1981. This includes proceedings begun before October 1, 1981, if final Commission action has not been taken before that date. Awards may be sought for fees and other expenses incurred before October 1, 1981, in any such covered proceeding.

[51 FR 18880, May 23, 1986]

**§ 148.3 Proceedings covered.**

(a) The Act applies to adjudicatory proceedings conducted by the Commission. These are adjudications under 5 U.S.C. 554 in which the position of the Commission or any other agency of the United States, or any component of an agency, is presented by an attorney or other representative who enters an appearance and participates in the proceeding. Repatriation proceedings under section 14 of the Commodity Exchange Act, 7 U.S.C. 18, Commission review of exchange disciplinary and access denial actions under section 8c of the Commodity Exchange Act, 7 U.S.C. 12c, and registered futures association disciplinary and membership denial actions under section 17 of the Commodity Exchange Act, 7 U.S.C. 21, are not covered by the Act. Proceedings brought to determine whether or not to grant or renew registrations pursuant to sections 8a or 17(o), of the Commodity Exchange Act, 7 U.S.C. 8, 12a and 21(o), or contract market designations pursuant to section 6(a) of the Commodity Exchange Act, 7 U.S.C. 8 (a), are excluded, but proceedings brought to suspend or revoke registrations or contract market designations are covered if they are otherwise adjudicatory proceedings. For the Commission, the types of proceedings generally covered are adjudicatory proceedings as defined in § 10.2(b) of this chapter; part 14 pro-

ceedings, if they involve a hearing, are also covered.

(b) The Commission's decision not to identify a type of proceeding as an adversary adjudication shall not preclude the filing of an application by a party who believes the proceeding is covered by the Act; whether the proceeding is covered will then be an issue for resolution in the proceedings on the application.

(c) If a proceeding includes both matters covered by the Act and matters specifically excluded from coverage, any award made will include only fees and expenses related to covered issues.

[46 FR 57671, Nov. 25, 1981, as amended at 51 FR 18880, May 23, 1986; 59 FR 5528, Feb. 7, 1994]

**§ 148.4 Eligibility of applicants.**

(a) To be eligible for an award of attorney fees and other expenses under the Act, the applicant must be a party to the adjudicatory proceeding for which it seeks an award. The term "party" is defined in 5 U.S.C. 551(3). The applicant must show that it meets all conditions of eligibility set out in this subpart and in subpart B.

(b) The types of eligible applicants are as follows:

(1) An individual with a net worth of not more than \$2 million;

(2) The sole owner of an unincorporated business who has a net worth of not more than \$7 million, including both personal and business interests, and not more than 500 employees;

(3) A charitable or other tax-exempt organization described in section 501(c)(3) of the Internal Revenue Code (26 U.S.C. 501(c)(3)) with not more than 500 employees;

(4) A cooperative association as defined in section 15(a) of the Agricultural Marketing Act (12 U.S.C. 1141j(a)) with not more than 500 employees; and

(5) Any other partnership, corporation, association, unit of local government, or public or private organization with a net worth of not more than \$7 million and not more than 500 employees.

(c) For the purpose of eligibility, the net worth and number of employees of an applicant shall be determined as of the date the adjudicatory proceeding was initiated.